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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 137

ÆTNA LIFE INSURANCE COMPANY, ETC., ET AL.,
PETITIONERS,

vs.

SAMUEL D. MOSES

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JUNE 6, 1932

CERTIORARI GRANTED OCTOBER 10, 1932

(36,834)

(36,834)

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[fols. a-1] [Captions omitted]

[fol. 2]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING A CIRCUIT COURT

At Law. No. 77614

ÆTNA LIFE INSURANCE COMPANY, a Corporation, in Its Own Right and also to the Use of Anna Roberts, in Her Own Right and as Administratrix of the Estate of Henry Roberts, Deceased, and Harry M. Bralove, an Individual, to the Use of Ætna Life Insurance Company, a Corporation, Plaintiffs,

vs.

SAMUEL D. MOSES, an Individual, Defendant

DECLARATION—Filed January 21, 1930

The plaintiffs, Ætna Life Insurance Company, a corporation doing business in the District of Columbia, in its own right, and also to the use of Anna Roberts in her own right and as administratrix of the estate of Henry Roberts, deceased, and Harry M. Bralove, an individual, to the use of Ætna Life Insurance Company, a corporation, sue the defendant, Samuel D. Moses, for that heretofore, to wit, on the 22nd day of January, 1929, and for some time prior thereto, said Harry M. Bralove was engaged in the erection and construction of certain buildings in the District of Columbia, among others, in the erection and construction of a certain apartment building situated, to wit, at the northeast corner of Connecticut Avenue and Porter Street, Northwest, in the District of Columbia; and for that on, to wit, the 22nd day of January, 1929, and for some time prior thereto, there was in force of law in the District of Columbia a certain act of Congress, being the Act approved May 17, 1928, c. 612, 45 Statutes at Large 600, entitled "An Act to provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia and for other pur-

poses," by which act it was provided, among other things, [fol. 3] that every employer carrying on employment in the District of Columbia should be liable for and should secure the payment to his employees, of compensation for injury or death that might occur to any such employe arising out of and in the course of said employment, and which said act further provided that every employer doing business in the District of Columbia should secure the payment of compensation to his employees, payable under said act, by insuring and keeping insured the payment of such compensation with any stock company or mutual company or association, or with any other person or fund, while such person or fund was authorized (A) under the laws of the United States or of any State, to insure workmen's compensation, and (B) by the United States Employees' Compensation Commission, to insure payment of compensation under the Act of May 17, 1928, aforesaid.

And for that, in accordance with the requirements of said Act of Congress, and by reason of his being an employer carrying on employment in the District of Columbia, the plaintiff Harry M. Bralove, on, to wit, the 1st day of July, 1928, applied for and entered into a contract of insurance with plaintiff, Ætna Life Insurance Company, a copy of which said contract (except for the words "Sample Policy" printed thereon) is hereto annexed, marked Exhibit A and prayed to be read and considered as a part hereof as if herein fully set forth, by which said policy of insurance it was agreed, among other things, that plaintiff Ætna Life Insurance Company would promptly pay to any person entitled thereto, under the District of Columbia Workmen's Compensation Act, being the Act of Congress approved May 17, 1928, aforesaid, and in the manner therein provided, the entire amount of any sum due, and all installments thereof as they became due, to such person because of the obligation for compensation for any such injury or death imposed upon plaintiff Harry M. Bralove under the statute aforesaid, and further, to pay for the benefit of plaintiff Harry M. Bralove the proper cost of whatever funeral expenses were required by the provisions of said Act in event of the fatal injury of any employee, the said policy of insurance further providing that plaintiff, Ætna Life Insurance Company, should be subrogated in case of any payment under said policy of insurance, to

[fol. 4] all rights of recovery therefor vested by law either in plaintiff, Harry M. Bralove, or in any employee or his dependents claiming thereunder, against persons, corporations, associations or estates.

And for that, to wit, on the 22nd day of January, 1929, and for some time prior thereto, one Henry Roberts, deceased, was employed by plaintiff Harry M. Bralove as a laborer in and about the construction of the apartment building aforesaid, and in the performance of said employment at the time and place aforesaid was engaged in certain labor requiring his pasage through and along a certain passageway provided for use on, to wit, the ground floor of said apartment building, and was passing through and along said passageway, which said passageway led along and under a certain form or mold used in the pouring of concrete as more fully hereinafter appears.

Plaintiffs further say that, to wit, at the time and place aforesaid, the defendant Samuel D. Moses was a subcontractor under plaintiff Harry M. Bralove, in and about the construction of said apartment building, to wit, for the construction of the concrete and tile work of said apartment building, which said subcontract included the erecting and maintaining of all forms, molds, scaffolds, supports, shores and braces necessary in said concrete and tile work and the construction, use and maintenance of all appliances and tools necessary for said work under the subcontract aforesaid. And plaintiffs say that during and in the course of the performance of the subcontract for concrete and tile work aforesaid, said defendant, his agents, servants and employees did undertake to, and did erect, construct, use and maintain in the apartment building aforesaid a certain form or mold for the pouring of a certain concrete slab.

And plaintiffs say that it then and there became and was the duty of the defendant, his agent, servants and employees, to construct, erect, use and maintain said form or mold, and all scaffolds, supports, shores, braces, appliances and tools appertaining thereto, in a reasonably safe condition and to use reasonable care and prudence in and about the preparing, pouring and finishing of all slabs, columns, piers and beams and to use reasonable care and prudence in and about the performance of the subcontract, aforesaid, so as to keep and save from injury or death [fol. 5] said Henry Roberts, deceased, and other persons

lawfully employed in and about said apartment building. But notwithstanding his said duty in the premises, and wholly disregarding the same, the defendant, his agents, servants and employees, at the time and place aforesaid, did negligently and carelessly erect and construct said form or mold, and the scaffolds, supports, shores, braces, appliances and tools appertaining thereto, of improper and defective materials and of materials insufficient in thickness and strength for the work and purpose required; and did negligently and carelessly erect and use scaffolding, supports, braces, shores, appliances and tools of insufficient length and unsuitable for the work required, and without using reasonable care and diligence in the joining, splicing and securing of said scaffolding, supports, braces, shores, appliances and tools; and did negligently and carelessly erect and use scaffolding, supports, braces, shores, appliances and tools of insufficient length by placing said scaffolding, supports, braces, shores, appliances and tools one upon the other and without using reasonable care and diligence to secure, fasten and brace the same, and without nailing or otherwise securing said scaffolding, supports, braces, appliances and tools to the ribbon strips as in such cases required, and without cross-bracing and fastening said supports, braces, shores, appliances and tools so as to prevent slipping longitudinally or transversely; and did negligently and carelessly erect and use said form or mold and said scaffolding, supports, braces, shores, appliances and tools without securely nailing the same at the places provided therefor, and by the existing conditions required thereat; and negligently and carelessly erected said form or mold and said scaffolding, supports, braces, shores, appliances and tools on uneven and sloping ground and without providing proper bases, foundations or footings known as mud-sills therefor, and on ground unsuitable for the purpose and subject to slippage and movement, and without nailing said scaffolding, supports, braces, shores, appliances and tools to suitable mud-sills or using other and proper means to firmly secure the same; and negligently and carelessly erected said form or mold and said scaffolding, [fol. 6] supports, braces, shores, appliances and tools without having the ribbon pieces necessary thereto properly spliced; and negligently and carelessly erected said form or mold without having the scaffolding, supports, braces,

shores, appliances and tools properly spaced and evenly distributed, but plaintiff avers that said scaffolding, supports, braces, shores, appliances and tools were too far apart and of improper distribution for the work required; and negligently and carelessly erected said form or mold and said scaffolding, supports, braces, shores, appliances and tools in such manner that a failure of one part of said scaffolding, supports, braces, shores, appliances and tools, would cause a failure of all and the collapse of said form or mold, and without protecting said scaffolding, supports, braces, shores, appliances and tools against accidental displacement or breakage; and negligently and carelessly placed said scaffolding, supports, braces, shores, appliances and tools in an improper manner and too close to the certain passageway provided for and used as aforesaid in the transportation of materials used in the construction of said apartment building; and negligently and carelessly erected said form or mold and said scaffolding, supports, braces, shores, appliances and tools without examining or inspecting the same; and negligently and carelessly began the placing of the steel and other materials and the pouring of concrete into said form or mold without examining or inspecting the same, in violation of certain sections of the Building Code of the District of Columbia then and there in force of law, which said sections of said Building Code of the District of Columbia provide as follows:

"Section III.—Precautions and Safeguards

Part 2. Scaffolding.—

A. All scaffolds erected for use in the construction, repair, alteration, or removal of buildings shall be securely and safely supported. They also shall be of sufficient width and properly secured to insure the safety of persons working thereon or passing thereunder or near the same, and to prevent the falling thereof of any materials therefrom. The man in immediate charge of construction or demoli- [fol. 7] tion of a building shall be watchful that the temporary structures shall not be loaded to the danger point. * * *"

"Section VIII.—Structural Engineering Regulations

Part 9. Concrete and Reinforced Concrete.—

* * * * * * *

F. Forms:

1. Forms shall be substantial and sufficiently tight to prevent leakage of mortar; they shall be properly braced or tied together so as to maintain position and shape. * * * Forms and shores shall be inspected during the pouring of the concrete to insure against movement or collapse."

And plaintiffs say that, to wit, at the time and place aforesaid, and by reason of the negligence and carelessness of the defendant, his agents, servants and employees as aforesaid, and while said Henry Roberts, deceased, was engaged in his said employment, and passing along and through the passageway under said form or mold as aforesaid, said form or mold and said scaffolds, supports, shores, braces, appliances and tools collapsed during the pouring of the concrete slab aforesaid, and fell into and upon the aforesaid, and while said Henry Roberts, deceased, was aforesaid, and upon and against the said Henry Roberts, deceased. And plaintiffs further say that by reason of said negligence and carelessness of the defendant, his agents, servants and employees, at the time and place aforesaid, said Henry Roberts, deceased then and there was mangled, maimed and crushed to death.

Plaintiffs further aver that thereafter, upon notice to plaintiff Ætna Life Insurance Company of said injury to and death of the said Henry Roberts, duly given by plaintiff Harry M. Bralove, and upon a claim for compensation filed by said Anna Roberts, widow of said Henry Roberts, deceased, with the United States Employees' Compensation Commission for the District of Columbia, and after hearing upon said claim duly had before the Deputy Commissioner for the District of Columbia of the United States Employees' Compensation Commission aforesaid, and in accordance with the statute in such cases made and provided, it was by said Deputy Commissioner found as a fact [fol. 8] that said Henry Roberts, deceased, to wit, at the time and place aforesaid, was an employee of plaintiff Harry M. Bralove; that the death of said Henry Roberts, deceased, was the result of an injury received in the course of his said employment; that the claimant for compensation for said death was his widow Anna Roberts, within the meaning of the Act of Congress approved May 17, 1928, aforesaid, whereupon said Deputy Commissioner en-

tered an award, a copy of which award is hereto annexed, marked Exhibit B and prayed to be read as a part hereof as if herein fully set forth, requiring plaintiff Harry M. Bralove and plaintiff Ætna Life Insurance Company to pay compensation to the claimant for the death of said Henry Roberts, deceased.

Plaintiff Ætna Life Insurance Company further says that in accordance with said award it has paid and will be required to pay to the person in said award named, the compensation as ordered therein. And plaintiff Ætna Life Insurance Company further says that under the Act of Congress approved May 17, 1928, aforesaid, it was provided that acceptance of compensation in cases where persons other than the employer were liable in damages, should operate as an assignment to the employer of all right of the person entitled to compensation to recover damages against such third person, and the employer on account of such assignment might institute proceedings for the recovery of damages. And plaintiff Ætna Life Insurance Company says that as the insurer of Harry M. Bralove under said Act of Congress and by virtue of the express terms of the policy of insurance hereinbefore set forth, it was subrogated to and assigned all rights of plaintiff Harry M. Bralove and persons entitled to compensation aforesaid.

And plaintiffs aver that under the statute aforesaid and by reason of the premises, they have been damaged in the sum of Ten Thousand Dollars ($10,000.00).

Wherefore, and in accordance with the statutes in such cases made and provided, plaintiff Ætna Life Insurance Company in its own right and also to the use of said Anna Roberts in her own right and as administratrix of the estate of Henry Roberts, deceased, and plaintiff Harry M. Bralove to the use of Ætna Life Insurance Company, bring this [fol. 9] suit and claim from said defendant the sum of Ten Thousand Dollars (($10,000.00) besides costs of this suit.

Second Count

The plaintiffs, Ætna Life Insurance Company, a corporation doing business in the District of Columbia, in its own right, and also to the use of Anna Roberts in her own right and as administratrix of the estate of Henry Roberts, de-

ceased, and Harry M. Bralove, an individual, to the use of Ætna Life Insurance Company, a corporation, sue the defendant, Samuel D. Moses, for that heretofore, to wit, on the 22nd day of January, 1929, and for some time prior thereto, said Harry M. Bralove was engaged in the erection and construction of certain buildings in the District of Columbia, among others, in the erection and construction of a certain apartment building situated, to wit, at the northeast corner of Connecticut Avenue and Porter Street, Northwest, in the District of Columbia; and for that on, to wit, the 22nd day of January, 1929, and for some time prior thereto, there was in force of law in the District of Columbia a certain act of Congress, being the Act approved May 17, 1928, c. 612, 45 Statutes at Large 600, entitled "An Act to provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia and for other purposes," by which act it was provided, among other things, that every employer carrying on employment in the District of Columbia should be liable for and should secure the payment to his employees, of compensation for injury or death that might occur to any such employee arising out of and in the course of said employment, and which said act further provided that every employer doing business in the District of Columbia should secure the payment of compensation to his employees, payable under said Act, by insuring and keeping insured the payment of such compensation with any stock company or mutual company or association, or with any other person or fund, while such person or fund was authorized (A) under the laws of the United States or of any State, to insure workmen's compensation, and (B) by the United States Employees' Compensation Commission, to insure payment of compensation under the Act of May 17, 1928, aforesaid.

[fol. 10] And for that, in accordance with the requirements of said Act of Congress, and by reason of his being an employer carrying on employment in the District of Columbia, the plaintiff Harry M. Bralove, on, to wit, the 1st day of July, 1928, applied for and entered into a contract of insurance with plaintiff, Ætna Life Insurance Company, a copy of which said contract (except for the words "Sample Policy" printed thereon) is hereto annexed, marked Exhibit A, and prayed to be read and considered as a part hereof as if

herein fully set forth, by which said policy of insurance it was agreed, among other things, that plaintiff Ætna Life Insurance Company would promptly pay to any person entitled thereto, under the District of Columbia Workmen's Compensation Act, being the Act of Congress approved May 17, 1928, aforesaid, and in the manner therein provided, the entire amount of any sum due, and all installments thereof as they became due, to such person because of the obligation for compensation for any such injury or death imposed upon plaintiff Harry M. Bralove under the statute aforesaid, and further, to pay for the benefit of plaintiff Harry M. Bralove the proper cost of whatever funeral expenses were required by the provisions of said Act in event of the fatal injury of any employee, the said policy of insurance further providing that plaintiff Ætna Life Insurance Company should be subrogated in case of any payment under said policy of insurance, to all rights of recovery therefor vested by law either in plaintiff Harry M. Bralove, or in any employee or his dependents claiming thereunder, against persons, corporations, associations or estates.

And for that, to wit, on the 22nd day of January, 1929, and for some time prior thereto, one Henry Roberts, deceased, was employed by plaintiff Harry M. Bralove as a laborer in and about the construction of the apartment building aforesaid, and in the performance of said employment at the time and place aforesaid was engaged in certain labor requiring his passage through and along a certain passageway provided for use on, to wit, the ground floor of said apartment building, and was passing through and along said passageway, which said passageway led along and under a [fol. 11] certain form or mold used in the pouring of concrete as more fully hereinafter appears.

Plaintiffs further say that, to wit, at the time and place aforesaid the defendant Samuel D. Moses was a subcontractor under plaintiff Harry M. Bralove, in and about the construction of said apartment building, to wit, for the construction of the concrete and tile work of said apartment building, which said subcontract included the erecting and maintaining of all forms, molds, scaffolds, supports, braces and shores necessary in said concrete and tile work and the construction, use and maintenance of all appliances and tools necessary for said work under the subcontract

aforesaid. And plaintiffs say that during and in the course of the performance of the subcontract for concrete and tile work aforesaid, said defendant, his agents, servants and employees did undertake to, and did erect, construct, use and maintain in the apartment building aforesaid a certain form or mold, and the scaffold, supports, braces, shores, appliances and tools appertaining thereto, necessary in the pouring of a certain concrete slab, said form or mold and said scaffolds, supports, braces, shores, appliances and tools appertaining thereto, being erected by and under the sole control of said defendant.

And plaintiffs say that it then and there became and was the duty of the defendant, his agents, servants and employees, to construct, erect, maintain and use said form or mold and all scaffolds, supports, braces, shores, appliances and tools appertaining thereto in a reasonably safe condition, and to use reasonable care and prudence in and about the preparing, pouring and finishing of all slabs, columns, piers and beams, and to use reasonable care and prudence in and about the performance of the subcontract aforesaid, so as to keep and save from injury or death said Henry Roberts, deceased, and other persons lawfully employed in and about said apartment building. But notwithstanding his said duty in the premises, and wholly disregarding the same, the defendant, his agents, servants and employees, at the time and place aforesaid, so negligently and carelessly erected and constructed said form or mold, and the scaffolds, supports, braces, shores, appliances and tools appertaining thereto, that said form or mold, and said scaffolds, [fol. 12] supports, braces, shores, appliances and tools appertaining thereto, and the cement and materials therein contained, collapsed during the pouring of the concrete slab in said form or mold, and fell into and upon the passageway used by said Henry Roberts, deceased, as aforesaid, and upon and against the said Henry Roberts, deceased, while said Henry Roberts, deceased, was engaged in his said employment, and passing along and through the passageway under said form or mold as aforesaid. Whereby and by reason of the negligence and carelessness of the defendant, his agents, servants and employees, at the time and place aforesaid, said Henry Roberts, deceased, then and there was mangled, maimed and crushed to death.

Plaintiffs further aver that thereafter, upon notice to plaintiff Ætna Lige Insurance Company of said injury to and death of the said Henry Roberts, duly given by plaintiff Harry M. Bralove, and upon a claim for compensation filed by said Anna Roberts, widow of said Henry Roberts, deceased, with the United States Employees' Compensation Commission for the District of Columbia, and after hearing upon said claim duly had before the Deputy Commissioner for the District of Columbia of the United States Employees' Compensation Commission aforesaid, and in accordance with the statute in such cases made and provided, it was by said Deputy Commissioner found as a fact that said Henry Roberts, deceased, to wit, at the time and place aforesaid, was an employee of plaintiff Harry M. Bralove; that the death of said Henry Roberts, deceased, was the result of an injury received in the course of his said employment; that the claimant for compensation for said death was his widow Anna Roberts, within the meaning of the Act of Congress approved May 17, 1928, aforesaid, whereupon said Deputy Commissioner entered an award, a copy of which award is hereto annexed, marked Exhibit B and prayed to be read as a part hereof as if herein fully set forth, requiring plaintiff Harry M. Bralove and plaintiff Ætna Life Insurance Company to pay compensation to the claimant for the death of said Henry Roberts, deceased.

Plaintiff Ætna Life Insurance Company further says that in accordance with said award it has paid and will be [fol. 13] required to pay to the person in said award named, the compensation as ordered therein. And plaintiff Ætna Life Insurance Company further says that under the Act of Congress approved May 17, 1928, aforesaid, it was provided that acceptance of compensation in cases where persons other than the employer were liable in damages, should operate as an assignment to the employer of all right of the person entitled to compensation to recover damages against such third person, and the employer on account of such assignment might institute proceedings for the recovery of damages. And plaintiff Ætna Life Insurance Company says that as the insurer of Harry M. Bralove under said Act of Congress and by virtue of the express terms of the policy of insurance hereinbefore set forth, it

was subrogated to and assigned all rights of plaintiff Harry M. Bralove and persons entitled to compensation aforesaid.

And plaintiffs aver that under the statute aforesaid and by reason of the premises, they have been damaged in the sum of Ten Thousand Dollars ($10,000.00).

Wherefore, and in accordance with the statutes in such cases made and provided, plaintiff Ætna Life Insurance Company in its own right and also to the use of said Anna Roberts in her own right and as administratrix of the estate of Henry Roberts, deceased, and plaintiff Harry M. Bralove to the use of Ætna Life Insurance Company, bring this suit and claim from said defendant the sum of Ten Thousand Dollars ($10,000.00) besides costs of this suit.

Chas. W. Arth, Leonard J. Ganse, Attorneys for Plaintiffs.

(Here follows Exhibit A, marked page 13a)

ÆTNA
LIFE INSURANCE COMPANY

ACCIDENT AND LIABILITY DEPARTMENT

HARTFORD, CONNECTICUT, (HEREIN CALLED THE COMPANY)

Does Hereby Agree with this Employer, named and described as such in the Declarations forming a part hereof, as respects personal injuries sustained by employees, including death at any time resulting therefrom as follows:

COMPENSATION. **One (a) To Pay Promptly** to any person entitled thereto, under the Workmen's Compensation Law and in the manner therein provided, the entire amount of any sum due, and all installments thereof as they become due,

(1) To such person because of the obligation for compensation for any such injury imposed upon or accepted by this Employer under such of certain statutes, as may be applicable thereto, cited and described in an endorsement attached to this Policy, each of which statutes is herein referred to as the Workmen's Compensation Law, and

(2) For the benefit of such person the proper cost of whatever medical, surgical, nurse or hospital services, medical or surgical apparatus or appliances and medicines, or, in the event of fatal injury, whatever funeral expenses are required by the provisions of such Workmen's Compensation Law.

It is agreed that all of the provisions of each Workmen's Compensation Law covered hereby shall be and remain a part of this contract as fully and completely as if written herein, so far as they apply to compensation or other benefits for any personal injury or death covered by this Policy, while this Policy shall remain in force. Nothing herein contained shall operate to so extend this Policy as to include within its terms any Workmen's Compensation Law, scheme or plan not cited in an endorsement hereto attached.

LIABILITY. **One (b) To Indemnify** this Employer against loss by reason of the liability imposed upon him by law for damages on account of such injuries to such of said employees as are legally employed wherever such injuries may be sustained within the territorial limits of the United States of America or the Dominion of Canada. In the event of the bankruptcy or insolvency of this Employer the Company shall not be relieved from the payment of such indemnity hereunder as would have been payable but for such bankruptcy or insolvency. If, because of such bankruptcy or insolvency, an execution against this Employer is returned unsatisfied in an action brought by the injured, or by another person claiming by, through or under the injured, then an action may be maintained by the injured, or by such other person claiming by, through or under the injured, against the Company under the terms of this Policy for the amount of the judgment in said action not exceeding the amount of this Policy.

SERVICE. **Two To Serve** this Employer **(a)** by the inspection of work places covered by the Policy when and as deemed desirable by the Company and thereupon to suggest to this Employer such changes or improvements as may operate to reduce the number or severity of injuries during work, and, **(b)** upon notice of such injuries, by investigation thereof and by settlement of any resulting claims in accordance with law.

DEFENSE. **Three To Defend,** in the name and on behalf of this Employer, any suits or other proceedings which may at any time be instituted against him on account of such injuries, including suits or other proceedings alleging such injuries and demanding damages or compensation therefor, although such suits, other proceedings, allegations or demands are wholly groundless, false or fraudulent.

COST AND EXPENSES. **Four To Pay** all costs taxed against this Employer in any legal proceeding defended by the Company, all interest accruing after entry of judgment and all expenses incurred by the Company for investigation, negotiation or defense.

EMPLOYEES COVERED. **Five This agreement shall apply** to such injuries sustained by any person or persons employed by this Employer whose entire remuneration shall be included in the total actual remuneration for which provision is hereinafter made, upon which remuneration the premium for this Policy is to be computed and adjusted, and, also to such injuries so sustained by the President, any Vice-President, Secretary or Treasurer of this Employer, if a corporation. The remuneration of any such designated officer shall not be subjected to a premium charge unless he is actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman.

BUSINESS COVERED. **Six This agreement shall apply** to such injuries so sustained by reason of the business operations described in said Declarations which, for the purpose of this insurance, shall include all operations necessary, incident or appurtenant thereto, or connected therewith, whether such operations are conducted at the work places defined and described in said Declarations or elsewhere in connection with, or in relation to, such work places.

POLICY TERM. **Seven This agreement shall apply only** to such injuries as are sustained by reason of accidents occurring during the Policy Period limited and defined as such in Item 2 of said Declarations.

This Agreement is subject to the following Conditions:

BASIS OF

SPECIMEN POLICY

or connected therewith, whether such operations are conducted at the work places defined and described in said Declarations or elsewhere in connection with, or in relation to, such work places.

POLICY TERM. Seven This agreement shall apply only to such injuries as sustained by reason of accidents occurring during the Policy Period limited and defined as such in Item 2 of said Declarations.

SAMPLE

This Agreement is subject to the following Conditions:

BASIS OF PREMIUM. A—The premium is based upon the entire remuneration earned, during the Policy Period, by all employees of this Employer engaged in the business operations described in said Declarations together with all operations necessary, incident or appurtenant thereto, or connected therewith whether conducted at such work places or elsewhere in connection therewith or in relation thereto; excepting however the remuneration of the President, any Vice-President, Secretary or Treasurer of this Employer, if a corporation, but including the remuneration of any one or more of such designated officers who are actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman. If any operations as above defined are undertaken by this Employer but are not described or rated in said Declarations, this Employer agrees to pay the premium thereon, at the time of the final adjustment of the premium in accordance with Condition C hereof, at the rates, and in compliance with the rules, of the Manual of Rates in use by the Company upon the date of issue of this Policy. At the end of the Policy Period the actual amount of the remuneration earned by employees during such Period shall be exhibited to the Company, as provided in Condition C hereof, and the earned premium adjusted in accordance therewith at the rates and under the conditions herein specified. If the earned premium, thus computed, is greater than the advance premium paid, this Employer shall immediately pay the additional amount to the Company, if less, the Company shall return to this Employer the unearned portion, but in any event the Company shall retain the Minimum Premium stated in said Declarations. All premiums provided by this Policy, or by any endorsement hereon, shall be fully earned whether any such Workmen's Compensation Law, or any part of such, is now or shall hereafter be declared invalid or unconstitutional.

CANCELLATION. B—This Policy may be cancelled at any time by either of the parties upon written notice to the other party stating when, not less than ten days thereafter, cancellation shall be effective. The effective date of such cancellation shall then be the end of the Policy Period. The law of any state, in which this Policy applies, which requires that notice of cancellation shall be given to any Board, Commission or other state agency is hereby made a part of this Policy and cancellation in such state shall not be effective except in compliance with such law. The remuneration of employees for the Policy Period stated in said Declarations shall be computed upon the basis of the actual remuneration to the date of cancellation determined as herein provided. If such cancellation is at the Company's request, the earned premium shall be adjusted pro rata as provided in Condition A. If such cancellation is at this Employer's request, the earned premium shall be computed and adjusted at short rates, in accordance with the table printed hereon, but such short rate premium shall not be less than the Minimum Premium stated in said Declarations. If this Employer when requesting cancellation is actually retiring from the business herein described, then the earned premium shall be computed and adjusted pro rata. Notice of cancellation shall be served upon this Employer as the law requires, but, if no different requirement, notice mailed to the address of this Employer herein given shall be a sufficient notice, and the check of the Company, similarly mailed, a sufficient tender of any unearned premium.

INSPECTION AND AUDIT. C—The Company shall be permitted, at all reasonable times during the Policy Period, to inspect the plants, works, machinery, and appliances covered by this Policy, and to examine this Employer's books at any time during the Policy Period, and any extension thereof, and within one year after its final expiration, so far as they relate to the remuneration earned by any employees of this Employer while this Policy was in force.

COMPANY'S OBLIGATIONS. D—The obligations of Paragraph One (a) foregoing are hereby declared to be the direct obligations and promises of the Company to any injured employee covered hereby, or, in the event of his death, to his dependents; and to each such employee or such dependent the Company is hereby made directly and primarily liable under said obligations and promises. This contract is made for the benefit of such employees or such dependents and is enforceable against the Company, but any such employee or such dependent in his name or on his behalf, at any time and in any manner permitted by law, whether claims or pro-

(7735)

ceedings are brought against the Company alone or jointly with this Employer. If the law of any state in which the Policy is applicable provides for the enforcement of the rights of such employees or such dependents by any Commission, Board or other state agency for the benefit of such employees or such dependents, then the provisions of such law are made a part hereof, as respects any matter subject thereto, as fully as if written herein. The obligations and promises of the Company as set forth in this paragraph shall not be affected by the failure of this Employer to do or refrain from doing any act required by the Policy; nor by any default of this Employer after the accident in the payment of premiums or in the giving of any notice required by the Policy or otherwise; nor by the death, insolvency, bankruptcy, legal incapacity or inability of this Employer, nor by any proceeding against him as a result of which the conduct of this Employer's business may be and continue to be in charge of an executor, administrator, receiver, trustee, assignee, or other person.

KNOWLEDGE AND JURISDICTION. E—As between the employee and the Company, notice to or knowledge of this Employer of an injury or death covered hereby shall be notice or knowledge as the case may be of the Company; the jurisdiction of this Employer for the purposes of any Workmen's Compensation Law covered hereby shall be jurisdiction of the Company and the Company shall in all things be bound by and subject to the findings, judgments, awards, decrees, orders or decisions rendered against this Employer in the form and manner provided by such laws and within the terms, limitations and provisions of this Policy not inconsistent with such laws.

REPORTING ACCIDENTS CLAIMS AND SUITS. F—This Employer, upon the occurrence of an accident, shall give immediate written notice thereof to the Company with the fullest information obtainable. He shall give like notice with full particulars of any claim made on account of such accident. If, thereafter, any suit or other proceeding is instituted against this Employer he shall immediately forward to the Company every summons, notice or other process served upon him. Nothing elsewhere contained in this Policy shall relieve this Employer of his obligations to the Company with respect to notice as herein imposed upon him.

ASSURED'S RIGHT OF RECOVERY. G—No action shall lie against the Company to recover upon any claim or for any loss under Paragraph One (b) foregoing unless brought after the amount of such claim or loss shall have been fixed and rendered certain either by final judgment against this Employer after trial of the issue or by agreement between the parties with the written consent of the Company, nor in any event unless brought within two years thereafter.

STATUTORY PROVISIONS AFFECTING NOTICES. H—If the method of serving notice of cancellation, or the limit of time for notice of accident or for any legal proceeding herein contained is at variance with any specific statutory provision in relation thereto, in force in the state in which any of the business operations herein described are conducted, such specific statutory provision shall supersede any such condition in this contract inconsistent therewith.

CHANGE OF INTEREST. I—No assignment of interest under this Policy shall bind the Company unless the consent of the Company shall be endorsed hereon.

CONCURRENT INSURANCE. J—If this Employer carries any other insurance covering a claim covered by this Policy, he shall not recover from the Company a larger proportion of any such claim than the sum hereby insured bears to the whole amount of valid and collectible insurance.

SUBROGATION OF RIGHTS. K—The Company shall be subrogated in case of any payment under this Policy, to the extent of such payment, to all rights of recovery therefor vested by law either in this Employer or, in any employee or his dependents claiming hereunder, against persons, corporations, associations or estates.

ALTERATIONS IN POLICY. L—No condition or provision of this Policy shall be waived or altered except by written endorsement attached hereto and signed by the President, a Vice-President, Secretary, or Assistant Secretary of the Company; nor shall notice to any agent, nor shall knowledge possessed by any agent, or by any other person, be held to effect a waiver or change in any part of this contract. Upon the acceptance of this Policy the assured agrees that its terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein. The personal pronoun herein used to refer to this Employer or to an injured employee or dependents, shall apply regardless of number or gender.

DECLARATIONS. M—The statements in Items 1 to 7, inclusive, in the Declarations hereinafter contained, are true; those stated as estimates only are believed to be true. This Policy is issued upon such statements and in consideration of the provisions of the Policy respecting its premium and the payment of the premium in such Declarations expressed.

In Witness Whereof, The Ætna Life Insurance Company *has caused this Policy to be signed by its President and Secretary and countersigned by a duly authorized agent of the Company.*

SAMPLE POLICY

Secretary.

SAMPLE POLICY

President.

Countersigned by

A. J. VOORHEES, Manager

By Frank O. Smith Attorney *General Agent—Manager.*

This space is intended for the attachment of such endorsements as may be executed as in the Policy provided, and, when so executed and attached, they are to be construed as a part of the Policy.

The agent shall see that this request for assignment is properly executed in case of change of interest and shall attach to this policy properly executed endorsement of approval.

.....*19*

FOR VALUE RECEIVED, and subject to the consent of the ÆTNA LIFE INSURANCE COMPANY, the interest of the Assured in this Policy is hereby assigned to .....,

of .....,
(State street, number, and town.)

a .....
(State whether individual, estate, co-partnership or corporation, and if a corporation name State in which incorporated; if a co-partnership give the name of each member thereof.)

.....
(Signature of Assured.)

Standard Workmen's Compensation and Employers' Liability Policy.

C. 069053

The agent shall see that this request for assignment is properly executed in case of change of interest and shall attach to this policy properly executed endorsement of approval.

.....*19*

FOR VALUE RECEIVED, and subject to the consent of the ÆTNA LIFE INSURANCE COMPANY, the interest of the Assured in this Policy is hereby assigned to .....,

of .....,
(State street, number, and town.)

a .....
(State whether individual, estate, co-partnership or corporation, and if a corporation name State in which incorporated; if a co-partnership give the name of each member thereof.)

.....
(Signature of Assured.)

SHORT RATE CANCELLATION TABLE

FOR TERM OF ONE YEAR.

	PER CENT. OF ANNUAL PREMIUM
1 day	2
2 days	4
3 "	5
4 "	6
. . . . .	. . . . .
. . . . .	. . . . .
. . . . .	. . . . .
. . . . .	. . . . .
. . . . .	. . . . .
. . . . .	. . . . .

NOTICE.

DON'T fail to notify the Home Office of the Company at Hartford, Conn., or its duly authorized agent, of EVERY ACCIDENT HOWEVER SLIGHT, IMMEDIATELY upon its occurrence.

If accident is fatal or involves SERIOUS INJURY, TELEGRAPH or TELEPHONE at Company's expense, giving date of inquest if one is to be held.

DO NOT DELAY sending in notice because unable to give all the information desired, send a completed notice later.

Standard Workmen's Compensation and Employers' Liability Policy.

C. 069035

ACCIDENT AND LIABILITY DEPARTMENT

ISSUED TO

HARRY M. BRALOVE

Expires July 1, 1929

STANDARD WORKMEN'S COMPENSATION AND EMPLOYERS' LIABILITY POLICY
Form 7735

SHORT RATE CANCELLATION TABLE

FOR TERM OF ONE YEAR.

		PER CENT. OF ANNUAL PREMIUM
1	day	2
2	days	4
3	"	5
4	"	6
5	"	7
6	"	8
7	"	9
8	"	9
9	"	10
10	"	10
11	"	11
12	"	12
13	"	13
14	"	13
15	"	14
16	"	14
17	"	15
18	"	16
19	"	16
20	"	17
25	"	19
30	"	20
35	"	23
40	"	26
45	"	27
50	"	28
55	"	29
60	"	30
65	"	33
70	"	36
75	"	37
80	"	38
85	"	39
90	" or three months	40
105	"	45
120	" or four months	50
135	"	55
150	" or five months	60
165	"	65
180	" or six months	70
195	"	73
210	" or seven months	75
225	"	78
240	" or eight months	80
255	"	83
270	" or nine months	85
285	"	88
300	" or ten months	90
315	"	93
330	" or eleven months	95
360	" or twelve months	100

Endorsement No. 3

It is understood and agreed that Item 1 of the Declarations of this policy is hereby amended to read as follows:

"Item 1. Name of this Employer - Harry M. Bralove and Broadmore Corp.

P. O. Address - 1106 Vermont Avenue, N. W., Washington, D. C.

Individual, co-partnership, corporation or estate? (1) Individual
(2) Corporation

instead of as originally written.

This endorsement when countersigned by a duly authorized General Agent of the Company, or Manager of one of the Company's Branch Offices, or by the lawful Attorney in fact of such General Agent or Manager, and attached to Policy No. C-069033 issued to Harry M. Bralove and Broadmore Corp. of Washington, D. C. shall be valid, and shall form a part of said Policy.

Ætna Life Insurance Company,
Accident and Liability Department,

E C Higgins
Secretary.

Countersigned at Washington, D. C.

this 1st day of January, 1929

by R Jones
Authorized General Agent or Manager.

1-14-29 MHP

FORM 7527-B

ENDORSEMENT.

ADDITIONAL OPERATIONS.

In consideration of an additional premium of $47.20 based on an estimated payroll of
It is hereby understood and agreed that from July 1, 1928 $4000.00

this Policy, subject to its terms, conditions and agreements, covers Building - operation (Owner or lessee) all employees engaged in care, custody and maintenance of premises, the operation of elevators heating, lighting and power apparatus; excluding extraordinary additions, alterations or repairs and the operation and maintenance of amusement devices. (Code 9015)

Location of building - 3901 Connecticut Avenue, N. W., Washington, D. C.

It is further agreed that the Assured will keep a separate record of the actual wages expended in the prosecution of the work above described, and will pay a premium thereon computed at a rate of 1.18
for each One Hundred Dollars ($100.00) thereof.

Attached to and forming part of Policy No. C-069033, *dated* July 1, 1928,
issued by the **Ætna Life Insurance Company,** *Accident and Liability Department, of Hartford, Conn.,*
to Harry M. Bralove,

July 1, *19* 28.

E C Higgins
Secretary.

Form 5038-A

10-17-28 MEP

DISTRICT OF COLUMBIA COMPENSATION LAW

The obligations of *Paragraph One* (*a*) of the Policy include the District of Columbia Workmen's Compensation Act, being Public Act No. 419 of the 70th Congress, approved May 17, 1928, and the applicable provisions of the Longshoremen's and Harbor Workers' Compensation Act, being Public Act No. 803 of the 69th Congress, and all laws amendatory of either of said Acts or supplementary thereto which may be or become effective while this Policy is in force.

The Company will carry out the provisions of Section 35 of the Longshoremen's and Harbor Workers' Compensation Act, made applicable by said Public Act No. 419 of the 70th Congress. Insolvency or bankruptcy of the employer and/or discharge therein shall not relieve the Company from payment of compensation and other benefits lawfully due for disability or death sustained by an employee during the life of the Policy.

The Company agrees to abide by all the provisions of said District of Columbia Workmen's Compensation Act and all lawful rules, regulations, orders, and decisions of the United States Employees' Compensation Commission and of the deputy commissioner for the District of Columbia having jurisdiction, unless and until set aside, modified, or reversed by a court having jurisdiction of the parties and the subject matter.

This endorsement shall not be cancelled prior to the date specified in this Policy for its expiration until at least thirty days have elapsed after a notice of cancellation has been sent to the Deputy Commissioner for the District of Columbia, and to this Employer.

References to the law of any State in Conditions B and D of this Policy are hereby declared to include, for the purposes of this endorsement only, the provisions of the District of Columbia Workmen's Compensation Act.

If this Employer is a contractor the subject of whose contract includes operations covered by this Policy and he shall sub-contract all or any part of such contract to one or more sub-contractors, the remuneration of all the direct employees of all such sub-contractors shall be included in the return of remuneration under the provisions of this Policy upon which premium is computed. Such remuneration so reported shall be considered the remuneration of employees of this Employer and shall in all instances be governed by the same terms, conditions, requirements, and obligations of the Policy as the remuneration of the direct employees of this Employer. The requirements of this paragraph shall not apply as respects any such sub-contractor who has secured compensation for his direct employees as required by the District of Columbia Workmen's Compensation Act, but this Employer shall not claim the benefit of this exemption unless and until he shall satisfy the Company by certificate or otherwise that any such sub-contractor has legally secured the payment of compensation to his own direct employees and then only respecting any sub-contractor who has furnished such proof.

If this Employer is a corporation, the entire remuneration of the President, any Vice-President, Secretary or Treasurer shall be disclosed and made subject to a premium charge at the rate applicable to the hazard to which each such officer is exposed, which rate shall be applied to the actual remuneration of each such officer but not in excess of $100 per week. If any such officer is exposed to varying hazards, premium shall be charged on the basis of the highest rate for any hazard to which he is exposed.

If the premium as determined in accordance with the provisions of the Policy is less than $300, there shall be added thereto an Expense Constant of $10, unless such addition shall increase the premium to an amount in excess of $300, in which event only such part of the Expense Constant shall be added as will bring the amount of the premium up to $300. Inclusion of the Expense Constant or any part thereof in the Estimated Advance Premium is subject to final adjustment upon audit, all in accordance with the provisions hereof. The Minimum Premium of the Policy includes the Expense Constant

Forming part of the Policy to which it is attached from its date of issue.

ÆTNA LIFE INSURANCE COMPANY, Accident and Liability Department, of Hartford, Conn.

E C Higgins

DECLARATIONS.

Attached to and forming part of Policy No. C -069053

Item 1. Name of this Employer Harry M. Bralove

P. O. Address 1106 Vermont Avenue, N. W., Washington, D. C.

For the purpose of serving notice, as in the Policy provided, this Employer agrees that this address may be considered as both the residence and business address of this Employer or any representative upon whom notice may be served.

Individual, co-partnership, corporation or estate? Individual

Item 2. The period during which the Policy shall remain in force, unless cancelled as in the Policy provided, (herein called the Policy Period) shall be from July 1, 19 28, to July 1, 19 29, at twelve and one minute o'clock A. M., standard time, as to each of said dates at the place where any operation covered hereby is conducted, as respects that operation, or at the place where any injury covered hereby is sustained, as respects that injury.

Item 3. Location of all factories, shops, yards, buildings, premises or other workplaces of this Employer, by Town or City, with Street and Number 1106 Vermont Avenue, N. W., Washington, D. C. and elsewhere in the District of Columbia.

All business operations, including the operative management and superintendence thereof, conducted at or from the locations and premises defined above as declared in each instance by a disclosure of estimated remuneration of employees under such of the following Divisions as are undertaken by this Employer. 1 All industrial operations upon the premises. 2 All office forces. 3 All repairs or alterations to premises. 4 Specially rated operations on the premises. 5 Operations not on the premises.

CLASSIFICATION OF OPERATIONS (NOTE: If more than one classification indicate each other by (b), (c), (d), etc.)	Estimated Total Annual Remuneration	Rate per $100. of Remuneration	Estimated Premium		
1 (a) Carpentry - installation of interior trim, builders' finish or cabinet work	$50,000.	1.30	650	00	
(x) President, any Vice-President, Secretary or Treasurer of corporate Employer who performs duties of Superintendent, Foreman or Workman.	none				
2 (a) Clerical Office Employees	6,000.	.05	3	00	
(b) Draughtsmen (engaged exclusively in the profession) — office duties only.	none				
3 New construction work by employees of this Employer only, classified as					
Note: Appropriate classifications must be entered above with estimated remuneration, rate and premium extension in each. Not available for contractors. Repairs and maintenance of this Employer's buildings and equipment when accomplished by his employees only are included in Division 1. New construction, repairs, and maintenance undertaken by contractors must be separately insured.	none				
4	none				
5 (a) Erection, installation, repair or demonstration of Employer's product as follows:	none				
(b) Outside Salesmen, collectors and messengers (wherever engaged) who do not deliver merchandise	none				
(c) Drivers and their Helpers, including stablemen — if not specifically included in Division 1.	none				
(d) Chauffeurs and their Helpers — Commercial, including incidental garage employees — if not specifically included in Division 1.	none				
Minimum Premium for this Policy shall be $30.00		Estimated Advance Premium	653	00	

Item 4. The foregoing enumeration and description of employees include all persons employed in the service of this Employer in connection with the business operations above described to whom remuneration of any nature in consideration of service is paid, allowed or due together with an estimate for the Policy Period of all such remuneration. This enumeration and description with the estimated remuneration shall also include the President, any Vice-President, Secretary or Treasurer of this Employer if a corporation if actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman, but any such designated officer not so engaged shall not be included in such enumeration, description or estimated remuneration. The foregoing estimates of remuneration are offered for the purpose of computing the advance premium. The Company shall be permitted to examine the books of this Employer at any time during the Policy Period and any extension thereof and within one year after its final termination so far as they relate to the remuneration earned by any employees of this Employer while the Policy was in force.

Item 5 This Employer is conducting no other business operations at this or any other location not herein disclosed — *except as herein stated:* no exceptions

Item 6. No similar insurance has been cancelled by any insurance carrier during the past year — *except as herein stated:* no exceptions

Item 7. The following signature is authorized and accepted by this Employer as his signature.

(Copy of Signature to Proposal) Harry M. Bralove

Per

FORM 7871-A

[fol. 14] EXHIBIT "B" TO DECLARATION

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION,
DISTRICT OF COLUMBIA COMPENSATION DISTRICT

In the Matter of the Claim for Compensation under the District of Columbia Workmen's Compensation Act

Case No. 1274-3

ANNA ROBERTS, Claimant,

vs.

HARRY BRALOVE, Employer; ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier

Compensation Order—Award of Compensation

Such investigation in respect to the above entitled claim having been made as is considered necessary, and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following

Findings of Fact

That on the 22d day of January, 1929, Henry Roberts hereinafter referred to as the employee, was in the service of the employer above named at 3601 Connecticut Avenue, N. W., Washington, D. C. in the District of Columbia Compensation District, established under the District of Columbia Workmen's Compensation Act; that the liability of the employer for compensation under the said Act was insured by the insurance carrier above named; that on the said day the employee, while performing service as a laborer, sustained personal injury; that said injury arose out of and occurred in the course of his employment while he was engaged in wheeling brick in a wheelbarrow underneath the decking which was supporting newly-poured concrete, when the structure collapsed and the employee was caught beneath the concrete and débris and instantly killed; that the death was the result of the injury received as above described; that due notice thereof was given to the employer and to the Deputy Commissioner; that the employer furnished necessary medical treatment, etc. in [fol. 15] accordance with Section 7 (a) of said Act; that the average weekly wage was $19.04; that the claimant

herein, Mrs. Anna Roberts, was born on the 5th day of July, 1893; that the said Anna Roberts and Henry Roberts were married on the 23rd day of September, 1914; that at the time of the death the claimant was not living with the said employee, but was living apart for justifiable cause; that she is the surviving wife of the employee within the meaning of Section 2 (16) of the said Act; that she is entitled to compensation in the amount of 35 per cent of $19.04 per week, or $6.66 per week; that at the time of the death there were no surviving children of the above named union; that from January 22 to March 18, 1929, inclusive, there is due claimant eight weeks' compensation at the rate of $6.66 per week, amounting to $53.28; that the amount of the burial expenses exceeded $200; and that the attorney, James A. Toomey, rendered legal services in behalf of the said Mrs. Anna Roberts in the amount of $50.

Upon the foregoing facts the Deputy Commissioner makes the following

Award

That the employer, Harry M. Bralove, and the Insurance Carrier, The Ætna Life Insurance Company, shall pay compensation to the claimant, Mrs. Anna Roberts, the sum of $6.66 per week, beginning January 22, 1929; that from January 22 to March 18, 1929, eight weeks' compensation, in the amount of $53.28, is due and shall be paid forthwith; that future installments of compensation in the amount of $13.32 shall be paid every two weeks and shall continue until further ordered by the Deputy Commissioner; that fees in the amount of $50 shall be paid to Attorney James A. Toomey for legal services, and said amount shall be paid out of and constitute a lien upon the unpaid installments of compensation; that there shall be paid to P. A. Lomax burial expenses in the sum of $200; and that the employer and the insurance carrier shall pay the necessary medical and hospital expenses incurred during the period of disability and throughout the process of recovery.

Given under my hand at Washington, D. C., this nineteenth day of March, 1929.

R. J. Hoage, Deputy Commissioner, District of Columbia Compensation District.

[fol. 16] Proof of Service

I hereby certify that a copy of the foregoing Compensation Order was sent by registered mail to the claimant, employer, insurance carrier, James A. Toomey, Attorney for claimant and P. A. Lomax, undertaker.

Name	Address
Anna Roberts	1339 29th Street, N. W., Washington, D. C.
Harry M. Bralove	1106 Vermont Avenue, N. W. " "
Ætna Life Insurance Co.	Investment Bldg., 15th & K Sts,, N. W., Washington, D. C.
James A. Toomey	1015 Fifteenth Street, N. W., Washington, D. C.
P. A. Lomax	1400 S Street, N. W., Washington, D. C.

R. J. Hoage, Deputy Commissioner.

Mailed March 19, 1929.

In Supreme Court of District of Columbia

Motion to Strike Declaration—Filed February 7, 1930

* * * * * * *

Comes now the defendant, Samuel D. Moses, by his attorneys, and moves the Court to strike out the first and second counts of the declaration filed herein.

Darr, Darr & Espey, by Sefton Darr, Attorneys for Defendant.

Note.—Among the matters intended to be argued in support of the aforegoing motion are the following:

1. That the Ætna Life Insurance Company sues as the assignee of Harry M. Bralove, and also sues as the assignor of Anna Roberts in her own right and as administratrix of Henry Roberts, deceased, and that the said Anna Roberts is suing in her own right as assignee, and suing as administratrix of the estate of Henry Roberts as assignee of the Ætna Life Insurance Company, thereby setting up three separate and distinct causes of action in favor of the Ætna Life Insurance Company, Anna Roberts in her own right and Anna Roberts as administratrix.

2. That the said declaration and both counts thereof show that there is a misjoinder of parties as all of said

[fol. 17] parties cannot, at the same time, maintain a cause of action based upon the facts averred in the declaration.

3. That the joinder of the three parties above named as parties plaintiff in a single cause of action constitutes repugnancy and inconsistency.

4. And for such other and further defects as appear on the face of said declaration.

Darr, Darr & Espey, by Sefton Darr, Attorneys for Defendant.

To Chas. W. Arth and Leonard J. Ganse, Esqs.,
Attorneys for plaintiffs:

Please take notice that we shall call the aforegoing motion to the attention of one of the Justices of the Supreme Court of the District of Columbia, holding a Circuit Court, on Friday, February 14, 1930, at 10 A. M., or as soon thereafter as counsel may be heard.

Darr, Darr & Espey, by Sefton Darr, Attorneys for Defendant.

Service of a copy of the aforegoing motion and notice acknowledged this 7th day of February, 1930.

Chas. W. Arth, Attorney for Plaintiffs.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MEMORANDUM OPINION—Filed July 15, 1930

* * * * * * *

The act provides that "acceptance of such compensation shall operate as an assignment to the employer of all rights of the person entitled to compensation to recover damages against such third person, &c." Also that the payment of compensation shall operate as an assignment to the employer of all right of the legal representative of the deceased to recover damages against such third person and the employer may institute proceedings for the recovery of damages. The statute contains no other provision for the assignment of the right of action and as the right of

[fol. 18] action is not one of the class assignable at common law, the assignment to the insurance carrier is invalid. An additional reason would be that the beneficiaries under this act and those under § 1301 et seq. of the code are not the same.

The proper party plaintiff is therefore the administratrix to the use of the employer.

I think that the question of misjoinder of parties is properly raised by the motion to strike, which is sustained, with leave to the plaintiff to file an amended declaration within twenty days.

Bailey, J.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

ORDER GRANTING MOTION TO STRIKE—July 15, 1930

* * * * * * *

Upon consideration of defendant's motion filed herein to strike out the first and second counts of the declaration it is ordered that the same be and it is hereby granted; whereupon, said declaration is hereby stricken out with leave to amend in twenty days hereof.

MEMORANDA

August 1, 1930.—Motion for enlargement of time within which to file amended declaration and acknowledgment, filed.

Motion of plff. to enlarge time for filing amended declaration to and including September 2, 1930, granted.

August 29, 1930.—Motion for extension of time to file amended declaration, filed.

Time to file amended declaration extended to October 2, 1930.

September 30, 1930.—Suggestion of special appeal made. Proceeding in this cause stayed until November 2, 1930, or such further time necessary until disposition of said appeal.

[fol. 19] October 29, 1930.—Time to file amended declaration extended from day to day to and including December 23, 1930.

In Supreme Court of the District of Columbia

Judgment—Dec. 22, 1930.

* * * * * * *

Come now the plaintiffs by their attorneys of record and elect to stand upon their declaration to which a motion to strike out the first and second counts thereof was sustained on July 15th, 1930, and thereupon, it is ordered that judgment be entered.

Wherefore, it is considered that plaintiffs take nothing by this action, that defendant go hence without day, be for nothing held and recover of plaintiffs his costs of defense to be taxed by the clerk and have execution thereof.

From the foregoing judgment the plaintiffs by their said attorneys, in open court, note an appeal to the Court of Appeals; whereupon, the maximum of an undertaking for costs is hereby fixed in the sum of One Hundred Dollars, with leave to deposit the sum of Fifty Dollars with the clerk in lieu thereof.

Memorandum as to Bond

December 29, 1930.—$50 deposited by plaintiff in lieu of bond on appeal.

In Supreme Court of District of Columbia

Assignment of Errors—Filed January 6, 1931

* * * * * * *

The errors committed by the Court are:

1. The Court erred in sustaining defendant's motion to strike the plaintiff's declaration, and in entering judgment for the defendant.

[fol. 20] 2. The Court erred in holding that in said declaration Ætna Life Insurance Company sues: (a) as the assignor of Anna Roberts in her own right and as administratrix of Henry Roberts, deceased; and (b) that the

said Anna Roberts is suing in her own right as assignee, and is also suing as administratrix of the estate of Henry Roberts as assignee of the Ætna Life Insurance Company.

3. The Court erred in holding that said declaration sets up three separate and distinct causes of action in each count thereof in behalf of Ætna Life Insurance Company, Anna Roberts in her own right, and as administratrix of the estate of Henry Roberts, deceased.

4. The Court erred in holding that said declaration and each count thereof shows a misjoinder of parties plaintiff, and that the parties plaintiff cannot, at the same time, maintain their actions herein.

5. The Court erred in holding that the joinder of the parties plaintiff as set forth in said declaration, in a single cause of action constitutes repugnancy and inconsistency.

6. The Court erred in holding that under the District of Columbia Workmen's Compensation Act (Act of Congress approved March 4, 1927, as amended by Act approved May 17, 1928, 45 Stat. at L. 600, c. 612; U. S. C. A. Title 33, Chapter 18) and Chapter 45, Secs. 1301-2-3 of the Code of Law for the District of Columbia, this action must be brought by Anna Roberts, administratrix of the estate of Henry Roberts, deceased to the use of the employer.

7. The Court erred in holding that Harry M. Bralove, the employer, could not maintain the action herein in his own name.

8. The Court erred in holding that Ætna Life Insurance Company, the carrier, could not maintain the action herein, and that under the District of Columbia Workmen's Compensation Act the carrier is not entitled to the same rights of action against the defendant herein as are given to the employer.

9. The Court er-ed in holding that Ætna Life Insurance Company, a corporation, in its own right and also to the use of Anna Roberts, in her own right and as administratrix of the estate of Henry Roberts, deceased, is not a proper party plaintiff to the action herein.

[fol. 21] 10. The Court erred in holding that Harry M. Bralove, an individual, to the use of Ætna Life Insurance

Company, a corporation, is not a proper party plaintiff to the action herein.

11. The Court erred in holding that Ætna Life Insurance Company, a corporation, in its own right is not a real party in interest having substantial rights to protect and a proper party plaintiff herein.

12. The Court erred in holding that Anna Roberts in her own right is not a real party in interest having substantial rights to protect and a proper use plaintiff herein.

13. The Court erred in holding that Anna Roberts, administratrix of the estate of Henry Roberts, deceased, is not a real party in interest having substantial rights to protect and a proper use plaintiff herein.

14. The Court erred in holding that Harry M. Bralove, an individual, to the use of Ætna Life Insurance Company, a corporation, is not a real party in interest having substantial rights to protect and a proper party plaintiff herein.

15. The Court erred in holding that, under the District of Columbia Workmen's Compensation Act and Chapter 45, Secs. 1301-2-3 of the Code of Law for the District of Columbia, the action for the death of Henry Roberts by wrongful act, neglect, or default of defendant could not be assigned.

16. The Court erred in holding that misjoinder of parties plaintiff and causes of action are defects of form properly raised by motion to strike and not defects of substance properly raised only by demurrer.

17. The Court erred in other respects apparent of record.

Chas. W. Arth, Leonard J. Ganse, Attorneys for Plaintiffs.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

DESIGNATION OF RECORD—Filed January 6, 1931

* * * * * * *

Now come the plaintiffs in the above entitled case and designate the parts of the record to be included in the [fols. 22 & 23] transcript, said parts being considered sufficient for the determination of the questions raised on appeal, namely:

1. Caption.
2. Declaration.
3. Motion To Strike Declaration.
4. Memorandum of Bailey, Justice.
5. Minute Entry striking out Counts 1 and 2 of the Declaration with leave to amend.
6. Memorandum showing appropriate proceedings for and granting of extensions of time to plead, to and including December 23, 1930.
7. Minute Entry of plaintiff's election to stand on declaration; judgment against plaintiff for costs; noting of appeal in open court and fixing of bond.
8. Memorandum showing cash deposit for costs on appeal.
9. Assignment of Errors.
10. This Designation of Record.

Chas. W. Arth, Leonard J. Ganse, Attorneys for Plaintiffs.

Service of a copy of the foregoing Designation of Record is hereby acknowledged this 6th day of January, 1931.

Darr, Darr & Espey, by H. Clay Espey, Attorneys for Defendant.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 24] Minute entry of argument and submission, February 8, 1932, omitted in printing.

[fol. 25] IN COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 5358

ÆTNNA LIFE INSURANCE COMPANY, a Corporation, in Its Own Right and Also to the Use of Anna Roberts, in Her Own Right and as Administratrix of the Estate of Henry Roberts, Deceased, and Harry M. Bralove, an Individual, to the Use of Ætna Life Insurance Company, a Corporation, Appellants,

v.

SAMUEL D. MOSES, an Individual, Appellee

Appeal from the Supreme Court of the District of Columbia

(Argued February 8, 1932. Decided March 7, 1932)

Charles W. Arth and Leonard J. Ganse, both of Washington, D. C., for appellants.

Charles W. Darr, Sefton Darr, H. Clay Espey, and George Monk, all of Washington, D. C., for appellee.

Before Martin, Chief Justice, and Robb and Groner, Associate Justices

OPINION

GRONER, Associate Justice:

This is an appeal from an order sustaining a motion of the defendant below (appellee) to strike the declaration of the plaintiffs (appellants). We shall speak of the parties as plaintiffs and defendant.

The declaration alleged that one Bralove, as general contractor, was engaged in the construction of a building in Washington, and, pursuant to the provisions of the workmen's compensation act (act Mar. 4, 1927, c. 509, 44 Stat. 1424; act May 17, 1928, c. 612, 45 Stat. 600; U. S. C. A. tit. 33, sec. 901 et seq.) was insured by Ætna Life Insurance Co. against liability for the payment of compensation to employees or their dependents; that one Henry Roberts was employed by Bralove as a laborer, and, while in the performance of his work, was killed through the negligence of Samuel D. Moses (defendant), a subcontractor on the work; that the widow of Roberts filed claim under the compensation act and an award was made to her by the commissioner; that Ætna Company has paid and will be required to pay the amounts covered by the award, and, because of this and a

provision of the insurance policy and likewise a provision [fol. 26] of the act, it was subrogated to all rights of Bralove (the employer) and the persons entitled to compensation.

In the declaration the parties plaintiff are stated as "Ætna Life Insurance Company, a corporation doing business in the District of Columbia, in its own right, and also to the use of Anna Roberts, in her own right, and as administratrix of the estate of Henry Roberts, deceased, and Harry M. Bralove, an individual, to the use of Ætna Life Insurance Company, a corporation."

The single question which we have to decide is, Was there a misjoinder of parties plaintiff in the declaration, or, expressed otherwise, Who are proper parties plaintiff, or use plaintiff, in an action brought against a third party wrongdoer under the facts shown in the declaration?

The District of Columbia workmen's compensation act (U. S. C. A. tit. 33) provides in sec. 909:

"If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following: * * * (b) If there be a surviving wife * * * and no child of the deceased under the age of eighteen years (as was found to be the case here), to such wife * * * 35 per centum of the average wages of the deceased, during widowhood * * * with two years' compensation in one sum upon remarriage * * *."

Section 914 (m) provides:

"The total compensation payable under this chapter for injury or death shall in no event exceed the sum of $7,500."

Section 932 provides that the employer shall secure the payment of compensation to his employees "by insuring and keeping insured the payment of such compensation with any stock company or mutual company or association, or with any other person or fund * * *."

And section 933, which relates to compensation for injuries where third persons are liable, is as follows:

"(a) If on account of a disability or death for which compensation is payable under this chapter the person entitled to such compensation determines that some person other than the employer is liable in damages, he may elect, by giv-

ing notice to the deputy commissioner in such manner as the commission may provide, to receive such compensation or recover damages against such third person.

"(b) Acceptance of such compensation shall operate as an assignment to the employer of all right of the person entitled to compensation to recover damages against such third person, whether or not the person entitled to compensation has notified the deputy commissioner of his election.

"(e) Any amount recovered by such employer on account of such assignment, whether or not as the result of a compromise, shall be distributed as follows:"

the employer shall retain, the expenses incurred in the proceedings; the cost of all benefits furnished the employee; all amounts paid as compensation, and the present value of all amounts payable as compensation; and everything in excess shall be paid to the person entitled to compensation or to his personal representative.

Subsections (f) and (g) of section 933 provide that if the person entitled to compensation or the representative elects to bring an action for damages against such third [fol. 27] person and receives, or compromises, with the approval of the employer, for less than the amount of compensation which would have been paid except for such election, the employer must pay the difference.

There is a still further provision (sec. 935) to the effect that notice to the employer shall be notice to the insurance carrier, and the jurisdiction by the commissioner or court of the employer shall carry with it jurisdiction of the carrier, and the finding of the commissioner shall be binding on the carrier equally with the employer.

The policy of insurance contains a provision subrogating the company, to the extent of any payments made by it, to all rights of recovery vested by law either in the employer or in any employee or his dependents against third persons, etc.

The trial court was of opinion that there was a misjoinder of parties plaintiff and that the proper party plaintiff was the "administratrix to the use of the employer."

We think the action should have been brought by the administratrix in accordance with the provisions of chapter 45 of the D. C. Code (1924, sec. 1302; tit. 21, sec. 2, D. C. Code 1929).

As we have already seen, the declaration names as parties Ætna Company, the insurer, in its own right and to the use of Mrs. Roberts, the widow, in her own right and as administratrix of deceased, and Bralove, the employer, to the use of Ætna Company, and it is insisted that this is a proper and logical arrangement of the parties plaintiff because the Ætna has paid the widow, who is solely entitled to death benefits under the act, and her acceptance of payment has transferred her right of action to Bralove by the terms of the act, but since Bralove himself has paid nothing, he has no cause of action on which to sue, and the purposes of the act would be thwarted unless his rights passed to the Ætna Company as his insurer. But this contention overlooks the well-established rule of the common law which governs in the District of Columbia, under which neither Ætna nor Bralove nor the widow in her own right is a proper legal plaintiff without specific statutory authority. Glenn v. Marbury, 145 U. S. 499, 509. There is no general statute in the District of Columbia changing the common law in this respect.

It is necessary, therefore, to turn to the statute (the compensation act) to ascertain whether, when compensation is paid or to be paid in a death case, the liability of the third person tort feasor is not only continued in force for the benefit of the employer but whether the statute also confers a new right or privilege by virtue of which the employer may assert the claim in his own name. The statute, as we have seen, provides acceptance of compensation "shall operate as an assignment to the employer of all right of the person entitled to compensation to recover damages against such third person," and such employer "may either institute proceedings for the recovery of such damages or may compromise with such third person either without or after instituting such proceeding." Obviously these provisions place upon the injured employee the duty of determining either to receive the compensation or to pursue his common law remedy against the third person liable for his injuries, and, if he elects to receive the compensation, the effect is to transfer his cause of action to his employer. In the latter case the employer's rights would be analogous to those of an insurance company to [fol. 28] sue the one who has caused the damage where it has paid the loss for which it is liable under its policy.

If there is any difference, it arises out of the fact that the right of subrogation in the case of the insurance company grows out of the nature of the contract of indemnity and in the case of the employer by the terms of the act, but in either case, as we think, the action under the rules of the common law should be asserted in the name of the party injured. See St. Louis Ry. v. Insurance Co., 139 U. S. 223, 235.

But the case instanced is that of an election by the injured person himself. If, instead of injury, death results through the negligence of a third person, a new cause of action nonexistent at common law is created by the provisions of the wrongful death statute (sec. 1301, D. C. Code 1924; tit. 21, D. C. Code 1929) in favor of the widow and next of kin of such deceased person, but it must be brought in the name of the personal representative within a year of the death of the deceased, and there is nothing in the compensation act which abrogates or limits the rights conferred by this statute, but, on the contrary, it specifically provides if "the representative"—meaning personal representative—elects to recover damages he may do so just as fully and in the same way as if no compensation act were in existence. On the other hand, if, on account of death for which compensation is payable, the person entitled to such compensation accepts compensation, such acceptance shall operate as an assignment to the employer of the right of the person "entitled to compensation" to recover damages against a third person tort feasor, and the employer "on account of such assignment may institute proceedings for the recovery of damages." The effect of the act, therefore, as we view it, is to cause the acceptance of payment of compensation to operate as an assignment of the right of the person entitled to compensation to recover damages against such third person. The compensation act in this way creates a valid assignment but no new or different right, for the right which is assigned is to prosecute an action under the wrongful death statute and that right remains the same and exists by virtue of that statute alone, and as section 1302 of the District Code (1924) provides that every action brought under it shall be brought in the name of the personal representative, and, as we held in Fleming v. Capital Traction Co., 40 App.

D. C. 489, no other person may bring the action, we think it is perfectly clear that there was a misjoinder of parties plaintiff in the bringing of the action.

It is quite true that the contrary of this has been held by a number of State courts in construing the provisions of State compensation laws, but in every case which has come to our attention the act itself made provision accordingly. Typical of these cases is Silvia v. Scotten, 32 Del. 295; 122 Atl. 513, 516. There the Supreme Court of Delaware, in answer to the query to which we have addressed ourselves, said:

"It thus appearing that the employer is in exclusive possession of the claim for damages against the third person tort-feasor, the next question is, how must he assert the claim? The statute in section 131 answers this question. It provides that he 'may recover in his own name, or that of the injured employee'."

Similar language is found in the California statute. Insurance Co. v. Railways, 178 Pac. 974. See also Hall v. Thayer, 225 Mass. 151, 113 N. E. 644.

[fol. 29] But the statute in the District of Columbia does not so provide. It makes the acceptance of compensation to operate as an assignment but it confers no new right or privilege changing the common law rule as to the manner in which the assignment may be enforced. In the case of an injured employee, the assignment is made to embrace "all right" of the injured person. In the case of an injury resulting in death, the assignment embraces "all right of the person entitled to compensation." Whether Congress meant by the language last quoted to confine the assignment to the distributive share of the recovery to which the person receiving compensation under the act would be entitled, or to give a right to complete indemnity in the entire recovery, as by the subsequent section is implied, we are not now called upon to decide. It is sufficient for present purposes to hold, as we do, that the act itself concerns primarily employer and employe. Its purpose is to adjust and fix their mutual rights and obligations, and, as incident to this, to preserve, in the case of a third party, the right to proceed against him for a tortious act. Such proceeding may be by the injured himself unaffected by the act, but, if he elects to accept compensation, the act, by

its terms, preserves his right for the benefit or indemnity of his employer, but in such case the employer must, under the rule of the common law, assert it in the employee's name. If the injury results in death, the beneficiaries under the act may refuse compensation and look primarily to the third party wrongdoer, or, instead, they may accept it and thus, as the act provides, transfer their right to the employer, but, in either case, the recovery must be sought as the statute creating the right directs.

Affirmed.

A true copy. Test:

—— ——, Clerk Court of Appeals, D. C.

[fol. 30] IN COURT OF APPEALS OF DISTRICT OF COLUMBIA, JANUARY TERM, 1932

* * * * * * *

No. 5358

ÆTNA LIFE INSURANCE COMPANY, a Corporation, in Its Own Right and Also to the Use of Anna Roberts, in Her Own Right and as Administratrix of the Estate of Henry Roberts, Deceased, and Harry M. Bralove, an Individual, to the Use of Ætna Life Insurance Company, a Corporation, Appellants,

vs.

SAMUEL D. MOSES, an Individual

JUDGMENT—March 7, 1932

Appeal from the Supreme Court of the Dist ict of Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Supreme Court, in this cause, be and the same is hereby, affirmed with costs.

Per Mr. Justice Groner, March 7, 1932.

(Mr. Justice Van Orsdel and Mr. Justice Hitz took no part in the consideration or decision of this case.)

[fol. 31] IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD—Filed May 16, 1932

The Clerk will please prepare a transcript on application for certiorari to the Supreme Court of the United States, including therein the following:

1. The printed record in the Court of Appeals.
2. Minute entry showing argument of cause.
3. Opinion of the Court.
4. The judgment.
5. This designation.
6. Clerk's certificate.

Chas. W. Arth, Leonard J. Ganse, Attorneys for Appellants.

Service of copy of the foregoing designation of record [fol. 32] is hereby acknowledged this 16th day of May, 1932.

Sefton Darr, George Monk, Attorneys for Appellee.

[fol. 33] [File endorsement omitted.]

[fol. 34] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 35] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 10, 1932

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 36,834. District of Columbia Court of Appeals. Term No. 137. Ætna Life Insurance Company, etc., et al., petitioners, vs. Samuel D. Moses. Petition for a writ of certiorari and exhibit thereto. Filed June 6, 1932. File No. 36,834.